

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #11	CCRB Case #: 201503336	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/18/2015 11:30 PM	Location of Incident: 250 West 131st Street	Precinct: 32	18 Mo. SOL 10/18/2016	EO SOL 10/18/2016	
Date/Time CV Reported Sun, 04/19/2015 1:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/28/2015 2:26 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jean Francisco	12654	950438	PSA 6
2. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Trea Emanuel	651	956621	PSA 6
2. POM Dennis Saucedo	28946	951216	PSA 6

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b)	
B.POM Jean Francisco	Force: PO Jean Francisco used a chokehold against § 87(2)(b)	
C.POM Jean Francisco	Force: PO Jean Francisco restricted § 87(2)(b) breathing.	
D.POM Jean Francisco	Force: PO Jean Francisco used pepper spray against § 87(2)(b)	

### Case Summary

On April 18, 2015, at approximately 11:30 p.m., § 87(2)(b) was sitting on a bench in front of 250 West 131<sup>st</sup> Street in Manhattan when PO Jean Francisco and PO Trea Emanuel, both of PSA-6, approached him. Approximately six or seven officers grabbed § 87(2)(b) and pushed him (**Allegation A**). PO Francisco allegedly put § 87(2)(b) into a chokehold, which left him unable to breathe (**Allegations B and C**). PO Francisco used pepper spray on § 87(2)(b) (**Allegation D**).

§ 87(2)(a) 160.50, § 87(2)(b)

This case exceeded 90 days because it was initially closed as complainant uncooperative. On January 13, 2016, the case was re-opened because § 87(2)(b) became available within eighteen months of the closure of the case.

There is no video evidence for this case.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because of § 87(2)(b) arrest.
- § 87(2)(b) filed a Notice of Claim for 4 million dollars against the City of New York, alleging that officers arrested, pepper sprayed, choked him unconscious, assaulted, accosted, battered, strip-searched, confined, unduly restrained and wrongfully prosecuted him without justification, provocation, or a warrant (see Board Review 01).
- § 87(2)(c), § 87(2)(b)

### Civilian and Officers CCRB Histories

- This is § 87(2)(b) second CCRB complaint. In case 201508130, § 87(2)(b) complained of allegations of physical force and discourteous action, that were closed as unsubstantiated (see Board Review 09).
- PO Francisco has been a member of the service for 4 years and has 12 allegations in 4 cases. In case 201505478, allegations of stop and frisk were substantiated; the Board recommended formalized training; the NYPD has not issued a disposition. In case 201508130, which also involved § 87(2)(b) and occurred after this incident, allegations of force and discourtesy action were unsubstantiated.

### Potential Issues

§ 87(2)(b) and § 87(2)(b) § 87(2)(b) provided phone statements, but were uncooperative with providing sworn statements (see Board Review 27 and 28). § 87(2)(b) and § 87(2)(b) who did not witness the allegations, and § 87(2)(b) who was unable to see details regarding specific officers due to his vantage point, provided phone statements. The following witnesses were uncooperative with the investigation: § 87(2)(b) and an individual known as § 87(2)(b) (see Board Review 29). § 87(2)(b) is neighbors, friends and/or related to the aforementioned witnesses and provided their names and contact information.

### Findings and Recommendation

#### Allegations not Pleaded

- **Force** § 87(2)(b) alleged that PO Francisco grabbed and twisted his left arm and shoulder while another officer grabbed his right arm and pulled it back. Given that these actions

were part of the typical handcuffing process, no physical force allegation is being pleaded.

- **Strip Search** Although § 87(2)(b) alleged in the Notice of Claim that he was strip searched, he did not mention this in any of the statements that he provided to the CCRB. As a result, no strip search allegation is being pleaded.

#### **Explanation of Subject Officer Identification**

§ 87(2)(b) was unable to describe the six or seven officers that were responsible for grabbing him and pushing him. Approximately fifteen officers from the 32<sup>nd</sup> Precinct responded to the incident after a call was made requesting additional units, which occurred during a tour change. Given the sheer number of officers that responded to the scene and the fact that § 87(2)(b) could not describe the officers that used the alleged force, **Allegation A** is being plead against “officers.”

#### **Recommendations**

**Allegation A-Force: Officers used physical force against § 87(2)(b)**

**Allegation B-Force: PO Jean Francisco used a chokehold against § 87(2)(b)**

**Allegation C-Force: PO Jean Francisco restricted § 87(2)(b) § 87(2)(b) breathing.**

**Allegation D-Force: PO Jean Francisco used pepper spray against § 87(2)(b)**

It was undisputed that PO Francisco used pepper spray against § 87(2)(b) however, the circumstance in which the pepper spray was used is disputed.

§ 87(2)(b) stated that at approximately 8:00 p.m., he went to a drinking lounge in Manhattan with his friends § 87(2)(b) and § 87(2)(b). While there, § 87(2)(b) had two shots of tequila and one shot of dark liquor. At around 10:00 p.m., they left the lounge and returned to 250 West 131<sup>st</sup> Street in Manhattan. Once there, § 87(2)(b) and § 87(2)(b) sat on a bench in front of the building for fifteen to twenty minutes, during which time they laughed and talked. § 87(2)(b) denied that they were drinking alcohol or smoking and denied that they had alcohol or drugs on them. While they were seated on the bench, § 87(2)(b) observed PO Francisco and PO Emanuel standing in front of the building, approximately eighty feet away. § 87(2)(b) pondered to his friends why the officers were there and not protecting their neighborhood. PO Francisco approached § 87(2)(b) stood approximately two or three inches from his face, and asked him what he had just said. § 87(2)(b) repeated to PO Francisco that he should be worried about protecting the neighborhood from shootings. PO Francisco asked § 87(2)(b) for his identification. In response, § 87(2)(b) immediately provided his South Carolina driver’s license. PO Francisco then instructed § 87(2)(b) to stand up. § 87(2)(b) asked PO Francisco what he did and why he had to stand up. PO Francisco instructed § 87(2)(b) to stand up again. As § 87(2)(b) began to stand up, he said, “It always has to be a Spic cop or what?” In response, PO Francisco yelled, “What?” and grabbed § 87(2)(b) left arm with both hands and twisted it to the side of him. § 87(2)(b) asked PO Francisco what he was doing and told him that he was hurting him. PO Francisco did not say anything in response but then proceeded to fully let go of § 87(2)(b) arm. § 87(2)(b) sat back down on the bench and remained seated. An officer then approached § 87(2)(b) and asked him what had happened. § 87(2)(b) told him that he did not want PO Francisco to arrest him because he had attacked him. While § 87(2)(b) was speaking to the officer, PO Francisco grabbed his left arm and twisted it again. The other officer then grabbed § 87(2)(b) right arm and pulled it behind his back. § 87(2)(b) denied that he was doing anything with his body when the officers were pulling him and denied that he resisted arrest.

Approximately eight to ten uniformed officers responded to the scene; however, § 87(2)(b) could not recall what the responding officers looked like. Approximately six to seven of these officers approached him, grabbed him and began to push him. § 87(2)(b) did not know

which way the officers were trying to push. During this time, § 87(2)(b) was still seated on the bench and PO Francisco was holding onto his left arm. Some of the officers told him to stop resisting and in response, § 87(2)(b) told them that he was not resisting. While PO Francisco was holding onto his left arm, he suddenly felt the release of that arm. § 87(2)(b) then immediately felt an elbow go around his neck from behind and begin to press down on his neck. This caused § 87(2)(b) to choke. While § 87(2)(b) was being choked, he could not breathe, did not have a free flow of air and attempted to gasp for air and tell the officers that he could not breathe and was being choked. § 87(2)(b) was choked for approximately five to six seconds before he was released. § 87(2)(b) believed that PO Francisco was responsible for choking him because he had just felt him release his left arm and because the hands that were choking him had a similar skin tone to PO Francisco. Additionally, § 87(2)(b) friend § 87(2)(b) told him after the incident that PO Francisco had choked him. § 87(2)(b) did not know § 87(2)(b) last name or have any contact information for him.

After PO Francisco released § 87(2)(b)'s neck, and while § 87(2)(b) was leaning over the bench to catch his breath, he was pepper sprayed four consecutive times, for about a second each time, by an officer he could not see, who was identified via investigation as PO Francisco. The pepper spray was discharged from a few inches away, at an angle below § 87(2)(b) face and was aimed at his face and his mouth. Immediately after the pepper spray was used, § 87(2)(b) blacked-out. § 87(2)(b) woke up in the ambulance on the way to § 87(2)(b) Hospital. Once there, he realized that his neck hurt and he had a head abrasion. § 87(2)(b) believed that his neck was injured as a result of being choked but he did not know how he received the abrasions. He was released after he received pain medication and was transported to the PSA-6 station house (see Board Review 30).

The Prehospital Care Report states that § 87(2)(b) was taken from the incident location to § 87(2)(b) Hospital by an ambulance. The reason an ambulance was dispatched for § 87(2)(b) was because he was unconscious. In the statement that § 87(2)(b) provided, his chief complaint was that he was maced and he stated that he received injuries as a result of a fight/brawl. The narrative of the report states that § 87(2)(b) was found sitting on the ground in the courtyard of an apartment complex. § 87(2)(b) was maced and arrested by the police. § 87(2)(b) subsequently threw himself to the ground and refused to cooperate. Upon arrival, § 87(2)(b) was breathing and had strong radical pulses. He refused to cooperate or talk to EMS (see Medical Records).

Medical Records show that on § 87(2)(b), at approximately § 87(2)(b), § 87(2)(b) arrived at § 87(2)(b) Hospital by ambulance, intoxicated and initially unresponsive. He complained that his neck hurt and that he had been maced. In the statement that he provided to the hospital, he stated that he knew he was in the hospital but did not know why or why he was under arrest. He also denied drinking. He did not state that he had been choked. In the statement that § 87(2)(b) mother gave to the hospital, she stated that § 87(2)(b) had an altercation with the NYPD and was choked. In the statement that PO Pryce gave to the hospital, he stated that § 87(2)(b) was maced. Dr. § 87(2)(b) noted that § 87(2)(b) appeared intoxicated and smelled of alcohol and Resident Nurse Thompson noted that § 87(2)(b) was intoxicated. § 87(2)(b) refused to have his blood drawn for a blood test. § 87(2)(b) was diagnosed with abrasions to his forehead and right periorbital area. There was no swelling to his neck. He was given Robaxin (a muscle relaxant), instructed to follow up with Medicine Primary Care in a week and was manually discharged to home or self-care at § 87(2)(b). § 87(2)(b) returned to § 87(2)(b) Hospital to complain of pain in his lower back, right wrist, neck and knees. § 87(2)(b) was wearing a neck brace that he stated was given to on his prior visit. He denied any recent injuries or falls. In the statement that he provided to the hospital, he stated that for the past four days, he has had lower back pain and was last seen at § 87(2)(b) Hospital on the same day that he was involved in an incident with police while under the influence of alcohol. He stated that since then, he had been

taking the prescribed Robaxin (a muscle relaxant) without any change in his symptoms; therefore, he had returned to the hospital to get more pain medication. § 87(2)(b) was given Methocarbamol (the generic name of Robaxin) and Naproxen (an anti-inflammatory) and was instructed to follow up with the Medical and Orthopedic Clinic within a week. He was also given a cane and educated on how to use it. He was discharged to home or self-care at § 87(2)(b) (see Medical Records).

The Pre-Arrest Screening Form shows that § 87(2)(b) was treated at § 87(2)(b) Hospital and was not sick or injured (see Medical Documents).

§ 87(2)(b) arrest photo shows him wearing a neck brace. There are no visible abrasions on his face (see Board Review 05).

§ 87(2)(b) stated that he was watching television in his apartment building when he heard screaming, which included, “Ahh get off” and “I can’t breathe,” from outside of his window. Once he looked outside of his window, he observed § 87(2)(b) lying on a bench, surrounded by four officers, one of whom had him in a chokehold. § 87(2)(b) believed that the officer was underneath § 87(2)(b) or was to the side of the bench with his arm around § 87(2)(b) neck. This caused § 87(2)(b) to be pinned against the bench. He could not describe the officer who used the chokehold on § 87(2)(b). § 87(2)(b) continued to scream that he could not breathe and nearby civilians told the officers to get off of him. § 87(2)(b) left his apartment and by the time he arrived, the officer no longer had his arm around § 87(2)(b) neck. § 87(2)(b) was still lying on the bench and was unconscious, foaming from the mouth, and was not speaking. Nearby civilians told the officers that § 87(2)(b) needed help and that he had asthma. It took approximately forty-five minutes for an ambulance to arrive and during that time, officers tried to rouse § 87(2)(b) by shaking him because he remained unconscious and would not move (see Board Review 19).

§ 87(2)(b) stated that he observed two officers approach § 87(2)(b) and speak to him from the window of his residence located on the eighth floor. The officers did not make physical contact with him and § 87(2)(b) did not do anything except sit on the bench. Ten to fifteen additional officers arrived and began to launch themselves onto § 87(2)(b) and beat him. § 87(2)(b) could not see everything that was occurring because the officers were crowded around § 87(2)(b) but he did see the officers beat § 87(2)(b) with their hands and believed that they could have also possibly used nightsticks. While he was being beaten, § 87(2)(b) remained on the bench and did not try and move. § 87(2)(b) was not present when the ambulance arrived because he stopped watching the incident (see Board Review 20).

§ 87(2)(b) stated that after she heard screaming from outside the window of her apartment, she immediately went downstairs to see what was happening. When she arrived, she observed § 87(2)(b) who was unconscious and lying on his back on the ground. One of the officers had had a knee on top of his neck, one had a knee on his stomach, and another had a knee on his legs. § 87(2)(b) and other civilians screamed to the officers that it appeared § 87(2)(b) needed medical attention because he could not breathe. Ten minutes after she arrived, the officers handcuffed § 87(2)(b) while he was lying on the ground. Later on, while § 87(2)(b) was up in a sitting position, officers slapped him in the face because he was responding and was unconscious (see Board Review 21).

§ 87(2)(b) stated was not present when any physical force was used on § 87(2)(b). When she observed § 87(2)(b) he was being held up by an officer in a seated position, during which time he was foaming from the mouth and was having difficulty breathing. § 87(2)(b) believed that § 87(2)(b) was unconscious but did not know for sure because the officers would not allow her to go near them. His body was limp when he was placed in an ambulance (see Board Review 18).

PO Francisco testified that he and PO Emanuel were on a foot post in front of 250 West 131st Street in Manhattan and had been instructed to address quality of life offenses. While they

were at their post, PO Francisco observed four males, including § 87(2)(b) drinking a bottle of wine from approximately fifteen feet away. PO Francisco knew it was a bottle of wine because he recognized the packaging of the bottle. PO Francisco walked five feet towards the group to ensure that they could see him with the hopes that they would notice him, stop drinking and put the bottle of wine away without him having to confront them. Once he had gotten closer to the group of males, they turned their heads and looked at PO Francisco but did not say anything. Although three of the individuals put their cups of wine onto the ground, § 87(2)(b) continued to pour wine into their cups and encourage them to drink. PO Francisco observed them continue to drink the wine for approximately one minute before he made the decision to approach them.

Once PO Francisco and PO Emanuel reached the group, PO Francisco immediately asked § 87(2)(b) for his identification, who complied and provide it. PO Francisco then asked § 87(2)(b) for his identification. § 87(2)(b) refused and told PO Francisco that he didn't need to. PO Francisco asked § 87(2)(b) for his identification at least five times initially and between fifteen to twenty times throughout the incident. § 87(2)(b) took out his identification but immediately stuffed it into his pants. In response, PO Francisco instructed § 87(2)(b) to show him his hands and to stand up. § 87(2)(b) refused to do either. The moment that § 87(2)(b) did not provide his identification, he was under arrest because § 87(2)(b) could be arrested for not providing his identification or at least detained until further investigation. PO Francisco attempted to grab one of § 87(2)(b) hands with his own hand so that he could handcuff him, but he was unsuccessful because § 87(2)(b) flailed and waved his arm around. § 87(2)(b) remained seating on the bench and continued to verbally taunt PO Francisco and say, "Look at you, you can't even grab me." At this time, a crowd of approximately ten to fifteen individuals began to form. The majority of the crowd was standing around, although some of the crowd's members were yelling and videotaping the incident. PO Francisco could not recall what the crowd was yelling in particular. While PO Francisco was interacting with § 87(2)(b) PO Emanuel faced towards the crowd and performed crowd control. PO Francisco instructed PO Emanuel to call for additional units because § 87(2)(b) was making it impossible for them to identify him and was using profanity, shouting, and being verbally abusive. PO Francisco could not recall what § 87(2)(b) was saying in particular.

Two minutes later, additional units, which included approximately fifteen officers, arrived to the scene on foot and vehicles. Five or six of the responding officers surrounded § 87(2)(b) and continued to ask for his identification. When § 87(2)(b) refused to provide his identification, the officers asked him to show them his hands. § 87(2)(b) refused to comply and waved his identification around. Officers then attempted to grab § 87(2)(b) by his wrists. At this point, PO Francisco stepped back so that the responding officers had room to handle the situation. § 87(2)(b) began to kick his legs forward and made physical contact with several officers. PO Francisco denied that he or any of the responding officers grabbed § 87(2)(b) and pushed him down, beat § 87(2)(b) or took out their nightsticks.

An officer was able to get a handcuff on § 87(2)(b) right wrist but before he was able to handcuff the left, § 87(2)(b) began to swing his handcuffed right arm around. The handcuffs that were attached to his right arm did not make any physical contact with any of the officers but PO Francisco did not know if § 87(2)(b) was attempting to use the handcuffs to try and hurt any of the officers. During this time, § 87(2)(b) was yelling phrases, none of which PO Francisco could make out and telling the officers that he was not resisting. After § 87(2)(b) swung the handcuffs around for thirty seconds, PO Francisco made the decision that he was going to pepper spray § 87(2)(b) for safety purposes. The only methods that PO Francisco used to try and gain § 87(2)(b) compliance prior to using the pepper spray involved trying to grab his wrists and the verbal commands and warnings that he gave him. PO Francisco decided to use the pepper spray, rather than any other form of physical force, because it was quick and because there was no need for him to use a baton because § 87(2)(b) was not swinging at him or any other officers directly. PO

Francisco warned § 87(2)(b) several times that if he continued to swing his arm around, that he would be pepper sprayed. § 87(2)(b) continued to swing his arm around and at one point, told PO Francisco to, “Go ahead and do it.”

PO Francisco informed the officers that he was going to pepper spray § 87(2)(b) so they were able to move or turn their faces away. PO Francisco, who was standing directly in front of § 87(2)(b) pepper sprayed him once in his eyes, in a “quick spray” from approximately a foot away. There were no other civilians nearby. Immediately thereafter, § 87(2)(b) stood up from the bench, moved to a kneeling position in front of the bench, and put his hands behind his back. PO Francisco was then able to finish handcuffing § 87(2)(b). PO Francisco observed § 87(2)(b) make facial expressions for a minute or two which indicated to him that he was having trouble breathing because he had just been pepper sprayed. It is common that after someone is pepper sprayed, they have trouble breathing. Once he was handcuffed, § 87(2)(b) lay down on the ground on his side and refused to stand up. PO Francisco believed that § 87(2)(b) got into this position because he was reacting to the pepper spray. Ten minutes passed between the time that he initially tried to grab § 87(2)(b) wrists to the time that the pepper spray was used. Immediately thereafter, PO Francisco called for an ambulance because it is procedure to do so when pepper spray is used. There were no additional reasons why PO Francisco called the ambulance.

After the pepper sprayed was used and prior to EMS arriving, § 87(2)(b) mother arrived to the scene. At this time, § 87(2)(b) was handcuffed and sitting up against PO Dennis Saucedá’s legs. PO Francisco did not see when § 87(2)(b) moved from lying on his side to sitting up against PO Saucedá’s legs. When his mother arrived, § 87(2)(b) did not speak to her. PO Francisco observed officers attempt to rouse § 87(2)(b) by saying, “Hello” and shaking him but did not believe that § 87(2)(b) was ever unconscious. PO Francisco denied that he participated in this and denied seeing officers slap § 87(2)(b) in his face in an attempt to wake him up. PO Francisco denied that he ever saw § 87(2)(b) foaming from the mouth and explained that because the pepper spray turns white, some people may have confused the pepper spray with foam. PO Francisco confirmed that no physical force was used by him or any other officers other than trying to grab § 87(2)(b) wrists and the use of the pepper spray.

There was several times that PO Francisco feared for his safety during the incident. First, before he called for backup because a crowd was forming behind him and he did not know what the intentions of the people in the crowd were. Next, when § 87(2)(b) would not give his hands to him because he did not know why § 87(2)(b) wasn’t cooperating, what he was thinking or what he had on him. The final time he feared for his safety was when § 87(2)(b) began to swing the handcuffs around. PO Francisco denied that § 87(2)(b) ever tried to lunge at or personally assault him or any other officers and denied that any officers were injured.

Other than being pepper sprayed, § 87(2)(b) did not receive any injuries as a result of the incident. PO Francisco denied seeing any abrasions on § 87(2)(b) face and denied hearing him complain of any injuries at the scene. § 87(2)(b) cooperated with EMS and told them that he had blacked-out prior to them arriving. Once § 87(2)(b) was put in the ambulance, he had no further interaction with him until he saw him at the station house the next morning.

§ 87(2)(a) 160.50

§ 87(2)(a) 160.50

§ 87(2)(b) never provided his identification to PO Francisco; therefore, he had to get this information from the officers who escorted him to the hospital. After § 87(2)(b) was treated at § 87(2)(b) Hospital, he was escorted to the PSA-6 station house. At around 7:30 a.m., PO Francisco was completing paperwork when he observed § 87(2)(b) in the station house from a distance and noticed that he had a neck brace on. PO Francisco overheard § 87(2)(b) tell officers at the station house that PO Francisco had choked him. PO Francisco denied

that he spoke to § 87(2)(b) directly about the fact that he had accused him of choking him and denied that § 87(2)(b) accused him directly of choking him. He also denied hearing § 87(2)(b) reference the specific time that the alleged choking took place.

PO Francisco denied that he or other officers put § 87(2)(b) in a chokehold or choked him. He denied that he or any officers made contact or pressed down on § 87(2)(b) neck. He denied that he had his arm or elbow around § 87(2)(b) neck and denied that he ever stood behind § 87(2)(b). PO Francisco denied that § 87(2)(b) breathing was ever restricted and denied that § 87(2)(b) complained that he could not breathe. The only time it appeared to PO Francisco that § 87(2)(b) could not breathe was the minute or two after he was pepper sprayed. PO Francisco denied observing any injuries on § 87(2)(b) neck and denied that he complained about any neck injuries. He also denied that § 87(2)(b) was ever pinned down on the bench or was ever lying on the bench.

§ 87(2)(a) 160.50

PO Emanuel corroborated PO Francisco's account with the following exceptions. PO Emanuel confirmed that she had her back towards PO Francisco and § 87(2)(b) during the incident because she was performing crowd control. She did not hear § 87(2)(b) complain that he could not breathe but heard members of the crowd state that § 87(2)(b) could not breathe because of his asthma. The ambulance was called because § 87(2)(b) was lying on the ground and could not breathe because of his asthma. PO Emanuel only learned from PO Francisco that § 87(2)(b) had been pepper sprayed on the date of her CCRB interview. PO Emanuel escorted § 87(2)(b) to § 87(2)(b) Hospital with PO Elvis Cornea. While in the ambulance, § 87(2)(b) had his eyes closed and was not speaking. One of the EMTs told § 87(2)(b) that she knew that he could hear her and he needed to speak or she was going to put a tube down his throat. § 87(2)(b) proceeded to nod his head but did not communicate in any other fashion. Once they got to the hospital, PO Emanuel observed that § 87(2)(b) was foaming from the mouth. She did not know what he was treated for.

The Medical Treatment of Prisoner Report states that § 87(2)(b) was intoxicated, had abrasions to his face, and alcohol on his breath (see Board Review 04).

The UF-49 report prepared by Captain Christopher Flanagan corroborated PO Francisco and PO Emanuel's accounts and added that when PO Francisco requested § 87(2)(b) identification, he produced a South Carolina Identification Card and began waving the card to mock the officers and then placed it in his rear pocket. While Captain Flanagan attempted to interview § 87(2)(b) at the hospital, § 87(2)(b) stated, "I'm fucked up, I just want to speak to my lawyer." § 87(2)(b) mother § 87(2)(b) § 87(2)(b) was interviewed at the hospital and stated that she did not witness the initial incident but came out when she heard something had happened between her son and the police. When she saw her son, he was on the ground and had his hands handcuffed behind his back. He was foaming from the mouth and had lost consciousness. She did not observe the police do anything. She mentioned that her son suffers from anemia and enlarged tonsils which affect his breathing and he is prescribed medication but never takes it (see Board Review 03).



IAB determined after reviewing video surveillance from the incident location, that there was no investigative value in regards to the alleged incident and recommended that the call out be closed and referred to the Chief of Departments' Investigations Unit with a spinoff to the CCRB (see IAB case file).

As discussed in the Explanation of Subject Officer Identification section, the investigation was unable to identify the officers who allegedly grabbed § 87(2)(b) and pushed him. § 87(2)(g)

Although § 87(2)(b) did obtain medical treatment following the incident and did complain of neck pain, it could not be determined if the injury he received resulted from the incident or from a chokehold specifically. § 87(2)(b) failed to mention being choked or the fact that his breathing had been restricted to medical personnel and the medical records show there was no swelling to his neck. In addition to the fact that § 87(2)(b) admitted that he had three shots of alcohol prior to his interaction with officers, both his medical records and the Medical Treatment of Prisoner Report note that he was intoxicated and smelled of alcohol. Furthermore, when § 87(2)(b) went back to § 87(2)(b) Hospital four days later; he admitted that he had been under the influence of alcohol during the incident. Although § 87(2)(b) mother reported to medical personnel that § 87(2)(b) had been choked, the UF-49 report states that she admitted to Captain Flanagan while being interviewed at the hospital that she did not witness the initial incident or officers doing anything to her son.

Although § 87(2)(b) who was uncooperative with the investigation, stated that he saw § 87(2)(b) being put in a chokehold, he stated that § 87(2)(b) was lying on a bench and the officer that was choking him was either underneath or to the side of him. § 87(2)(b) never mentioned being pinned to the bench and stated that he was seated when PO Francisco choked him from behind. § 87(2)(b) is neighbors with § 87(2)(b) and provided his contact information. PO Francisco and PO Emanuel attributed the fact that § 87(2)(b) could not breathe to the pepper spray being used. Both PO Francisco and PO Emanuel denied that a chokehold occurred. In addition, the UF-49 report states that § 87(2)(b) mother informed Captain Flanagan that § 87(2)(b) suffers from anemia and enlarged tonsils which affect his breathing and added that he does not take his medication. Given these discrepancies, it could not be determined if § 87(2)(b) was having trouble breathing during the incident because he was choked, because he was pepper sprayed or because of a pre-existing condition.

§ 87(2)(g)

§ 87(2)(b) maintained that at the time that he was pepper sprayed, he was not displaying any type of resistance and was leaning over to try and catch his breath. In this particular context, PO Francisco's actions would not have been appropriate; however, the context in which the pepper sprayed was used is in dispute. According to PO Francisco, § 87(2)(b) was yelling, refusing to provide his identification or hands to the officers and was swinging his right arm around, which had a pair of handcuffs attached to it. In addition, PO Francisco testified that he gave § 87(2)(b) a verbal warning that he was going to pepper spray him, and § 87(2)(b) encouraged him to use the pepper spray. § 87(2)(g)

§ 87(2)(g)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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Pod: 11

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date